

COPY

STATE OF NEW YORK : COUNTY OF ULMSTER
TOWN OF MARLBOROUGH ZONING BOARD

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In the Matter of

ROYAL ENERGY

#1666 Route 9W, Milton, New York 12547

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BOARD VOTE FOR A 6' FRONT YARD AND 40' REAR
YARD AREA VARIANCE REQUEST.

Date: November 14, 2019
Time: 7:20 p.m.
Place: Town of Marlborough
Town Hall
#21 Milton Turnpike
Milton, New York 12547

BOARD MEMBERS: WILLIAM GIAMETTA, Chairman
JEFF MEKEEL
DAVE ZAMBITO
LENNY CONN, Absent
GEORGE SALINOVICH

ALSO PRESENT:

IAN MacDONALD, ESQ.
PATRICIA BROOKS, LS
PENNY E. CASHMAN, ZONING BOARD SECRETARY,

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1 ROYAL ENERGY

2 CHAIRMAN GIAMETTA: I want to take
3 a few minutes to allow Ian MacDonald to
4 arrive. He told me he would be here
5 between 7:15 and 7:30, so let's just
6 take a short recess.

7 (Short break)

8 CHAIRMAN GIAMETTA: We're going to
9 start the second matter on the agenda,
10 and as per the agenda description, it's
11 going to be a board vote for a six-foot
12 front yard and 50-foot rear yard area
13 variance. The reason it's a vote on
14 tonight's meeting is -- actually I'm
15 going to ask Attorney MacDonald to help
16 out with why we have to address this
17 this evening.

18 MR. MacDONALD: Sure. So it's my
19 understanding that this application was
20 heard by the board back in the spring,
21 public hearing was held, board voted
22 and granted the application for the
23 variances that were requested. And
24 subsequent to the board's
25 determination, it was discovered that

1 ROYAL ENERGY
2 referral required under Section 239 of
3 the General Municipal Law to Ulster
4 County was not made, and 239M requires
5 certain applications to be referred to
6 the County Planning Board when the
7 property is within 500 feet of certain
8 other boundaries, roads, parks, things
9 like that.

10 In this case my understanding is
11 because the property is on Route 9W,
12 which is a New York State road, Section
13 239M of the General Municipal Law
14 requires a referral, because the
15 applicant is within 500 feet of a New
16 York State right of way. So,
17 unfortunately, the failure to make the
18 referral does render the prior
19 determination void. That is law on the
20 issue, but it can be rectified, and my
21 understanding is that's what the board
22 wants to do here.

23 So, I did prepare a proposed
24 resolution in findings of the fact.
25 The findings of the fact are

1 ROYAL ENERGY
2 essentially identical to the ones that
3 were adopted by the board. I believe
4 it was on April 11th, was the meeting
5 during which the application was
6 granted previously, and I did amend the
7 resolution a little bit just to explain
8 what has happened here, and so if
9 anybody goes back and looks at the
10 record, it's clear as to what happened.

11 But if, you know, this is entirely up
12 to the board, the referral was made to
13 Ulster County Planning, Ulster County
14 Planning came back with essentially no
15 comment --

16 MS. BROOKS: No county impact.

17 MR. MacDONALD: Or county impact,
18 that was a local matter, not of Ulster
19 County concerns. So, the board is free
20 to make its own determination if it so
21 chooses to make the same determination
22 that it made back in April. It can
23 adopt the resolution that I prepared,
24 and before doing that -- you already
25 had the public hearing, you don't need

1 ROYAL ENERGY

2 to have a public hearing again.

3 It wasn't clear to me looking at
4 the file whether a SEQR determination
5 was made.

6 MS. BROOKS: Yeah, it was. It was
7 part of the record of findings. The
8 ZBA conducted an uncoordinated review
9 as the applicant had prepared a long
10 form EAF, Part One and Three, and a
11 negative declaration of significance
12 with issue. That was in the record of
13 findings from April 11th.

14 MR. MacDONALD: Okay. What I did,
15 and this doesn't hurt in any way, I
16 added language to the resolution just
17 that you're -- that it is a -- can you
18 read that? That it's a type two
19 action, you say?

20 CHAIRMAN GIAMETTA: Please state
21 your name for the record.

22 MS. BROOKS: Sure. Patricia
23 Brooks, representing the applicant. I
24 also was not, at that point in time,
25 representing the applicant, so I'm just

1 ROYAL ENERGY
2 reading from the documents that I got
3 from the file, but page two of three of
4 the records of findings says the ZBA
5 conducted an uncoordinated review as
6 the applicant has prepared a long form
7 EAF Part One. The board prepared Parts
8 Two and Three and a negative
9 declaration. It doesn't say how it was
10 typed.

11 MR. MacDONALD: Okay. So I added
12 language to the resolution that just
13 explains it as an unlisted action under
14 SEQR, and that the board is adopting
15 the negative declaration contained in
16 the -- in Part Three of the EAF. So, I
17 have Part Two and Three of the EAF.
18 Rebecca Valk, my predecessor, had
19 signed Part Three as the preparer. I
20 signed it again, and then Bill, as
21 Chairman, I would recommend that you
22 sign it. Again, it doesn't hurt in any
23 way, just making the same
24 determination. In my opinion, it's
25 better because if anyone were to

1 ROYAL ENERGY
2 challenge it and say they should have
3 made a second determination, you know,
4 under SEQR on the application, that you
5 have done it.

6 MR. ZAMBITO: Can I ask you a
7 question? When you refer to something
8 like this to Ulster County Planning
9 Board, what power do they have? Do
10 they say no, we don't want you to do
11 it, or are you just going to give us
12 recommendations?

13 MR. MacDONALD: The Ulster
14 Planning Department only has advisory
15 authority.

16 MR. ZAMBITO: So just
17 recommendation?

18 MR. MacDONALD: Correct.

19 MR. ZAMBITO: Which we can or
20 don't have to follow?

21 MR. MacDONALD: That is correct.

22 MR. ZAMBITO: I just wanted to
23 clarify that. I'm a little confused.
24 I understand what you're saying, we
25 have to present it to them.

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2 MR. MacDONALD: That's correct.

3 MR. ZAMBITO: But whether we
4 present it to them or not, we don't
5 have to do anything that we already
6 did.

7 MR. MacDONALD: It seems odd, but
8 the law requires you to make the
9 referral. They have the opportunity to
10 comment on the application.

11 MR. ZAMBITO: And you can take it
12 in or --

13 MR. MacDONALD: Right. The
14 significance to you is that if their
15 recommendation is that the application
16 be denied, or they have comment about
17 it, and you don't follow those
18 comments, or you would grant an
19 application, despite the recommendation
20 of Ulster County Planning that you
21 don't grant the application, then you
22 can still grant the application, but
23 you have to do it by super majority
24 vote. You would need -- generally, you
25 would have the authority to grant the

1 ROYAL ENERGY
2 application by super majority three out
3 of five members. If Ulster County
4 Planning makes comments that you don't
5 follow, or they recommend not
6 adopting -- or granting the
7 application, you would have to do that
8 by --

9 MR. ZAMBITO: Majority plus one.

10 MR. MacDONALD: -- majority plus
11 one. And you also have a requirement
12 if you went back to Ulster County
13 Planning and you have to put your
14 findings on the record as to why you
15 are not following their
16 recommendations.

17 MR. ZAMBITO: Okay.

18 MR. MacDONALD: But you're right,
19 their authority is merely advisory.

20 MR. ZAMBITO: That's what I
21 thought. I just wanted to make sure.
22 I wasn't sure.

23 MR. MacDONALD: That's correct.

24 MS. BROOKS: And sometimes they
25 will give -- for this one, they gave no

1 ROYAL ENERGY
2 county impact. Sometimes they will
3 give recommended modifications, which
4 do not have to have a super majority,
5 or they have required modifications
6 that do require super majority to
7 override.

8 MR. MacDONALD: In this case, they
9 had to comment and agree to make the
10 determination that you want to make as
11 a board.

12 MR. ZAMBITO: Thank you.

13 CHAIRMAN GIAMETTA: We have here
14 tonight a representative of the
15 applicant and would you like to be
16 heard on this matter?

17 MS. BROOKS: Not unless the board
18 has any additional questions.

19 Basically, I was just going to ask the
20 board to adopt the same record of
21 findings as in April that your attorney
22 has drafted a new resolution, it's
23 probably a cleaner copy.

24 MR. MacDONALD: I have a copy if
25 you want to take a look at it quickly.

1 ROYAL ENERGY

2 MS. BROOKS: Sure. Is that an
3 extra copy for my records?

4 MR. MacDONALD: Yes.

5 MS. BROOKS: Thank you.

6 CHAIRMAN GIAMETTA: Okay. Well,
7 thank you for explaining that. And
8 boards members, do we have any further
9 concerns or questions about this Royal
10 Energy matter?

11 MR. MEKEEL: I do not.

12 MR. ZAMBITO: No.

13 MR. SALINOVICH: No.

14 CHAIRMAN GIAMETTA: Having heard
15 none, I now ask for a motion to vote.

16 MR. MacDONALD: Mr. Chairman, I
17 would recommend this, again, in the
18 abundance of caution, that you would
19 start with just by motion, adopting the
20 negative declaration and Part Three of
21 the EAF.

22 CHAIRMAN GIAMETTA: Okay.

23 MR. MacDONALD: And then you can
24 adopt the resolution.

25 CHAIRMAN GIAMETTA: Okay.

1 ROYAL ENERGY

2 MR. MacDONALD: So the board --

3 CHAIRMAN GIAMETTA: That is two
4 motions we're going to need?

5 MR. MacDONALD: Correct.

6 CHAIRMAN GIAMETTA: Okay. We have
7 to make a motion on the adoption.

8 MR. ZAMBITO: Okay. So I will
9 make a motion to accept Part Three of
10 the EAF.

11 MR. MacDONALD: With the negative
12 declaration.

13 MR. ZAMBITO: With the negative
14 declaration.

15 CHAIRMAN GIAMETTA: And a second
16 on that?

17 MR. MEKEEL: I will second that.

18 CHAIRMAN GIAMETTA: And all in
19 favor?

20 MR. SALINOVICH: Aye.

21 MR. MEKEEL: Aye.

22 MR. ZAMBITO: Aye.

23 CHAIRMAN GIAMETTA: And aye. That
24 has been adopted. Okay. We're ready
25 for a motion for --

1 ROYAL ENERGY

2 MR. ZAMBITO: I have a motion to
3 grant a six-foot front yard, and a 40-
4 foot rear yard area variance as
5 requested by Royal Energy Properties,
6 LLC at the location of 1666 Route 9W,
7 Milton, New York 12547.

8 CHAIRMAN GIAMETTA: And a second
9 to that motion?

10 MR. SALINOVICH: I will second.

11 CHAIRMAN GIAMETTA: I heard a
12 second. And a vote. Mr. Salinovich?

13 MR. SALINOVICH: Aye.

14 CHAIRMAN GIAMETTA: Mr. Mekeel?

15 MR. MEKEEL: Aye.

16 CHAIRMAN GIAMETTA: Mr. Zambito?

17 MR. ZAMBITO: Aye.

18 CHAIRMAN GIAMETTA: Okay. And aye
19 from the chair.

20 MR. MacDONALD: And I would just
21 recommend that you, by motion, accept
22 and adopt the resolution that
23 incorporates the findings.

24 CHAIRMAN GIAMETTA: Is that a
25 third motion we're going to need?

1 ROYAL ENERGY

2 MR. MacDONALD: Well, I guess so.

3 It's a little bit redundant, but, to
4 me, it's more comprehensive.

5 CHAIRMAN GIAMETTA: We're going to
6 need a motion to adopt the resolution.

7 MR. MEKEEL: I will make a motion
8 that we adopt the resolution, dated
9 November 14th, 2019. The applicant is
10 Royal Energies, LLC.

11 CHAIRMAN GIAMETTA: And a second?

12 MR. ZAMBITO: I will second.

13 CHAIRMAN GIAMETTA: All in favor?

14 MR. MEKEEL: Aye.

15 MR. ZAMBITO: Aye.

16 MR. SALINOVICH: Aye.

17 CHAIRMAN GIAMETTA: Aye. Carried.

18 Thank you very much.

19 MS. BROOKS: Thank you very much.

20 And as your attorney discussed, the
21 final report that has to go back to the
22 county saying that you approved it and
23 the County Planning board's decision
24 that there is no county impact. And
25 then you're going to need to attach a

1 ROYAL ENERGY

2 copy of the resolution, and you need to
3 sign that and date it, and then Penny
4 will be able to send it up to Ulster
5 County Planning Board.

6 CHAIRMAN GIAMETTA: Counsel, have
7 you seen that form before, or would you
8 please have a look at it?

9 MS. BROOKS: That actually gets
10 sent down to the county with their
11 decision, with their determination.

12 MR. MacDONALD: So you just send
13 this form?

14 MS. BROOKS: So you just send back
15 that form with the resolution.

16 MR. MacDONALD: With the
17 resolution. It doesn't look like
18 anything on here that needs to be --
19 oh, local board's decision, we could
20 just put granted.

21 MS. BROOKS: Right. Approved or
22 disapproved, and we just checked off
23 approved.

24 MR. MacDONALD: Okay.

25 MS. BROOKS: Now, that's where if

1 ROYAL ENERGY

2 they would have had findings that they
3 disagreed with, that, of course, would
4 get added with it, but it's a rather
5 simple form when it's -- when there
6 were no difficulties.

7 MR. MacDONALD: Okay. So Penny, I
8 will just give this to you, and you can
9 send this to Ulster County Planning
10 Board with a copy of the resolution.

11 MS. CASHMAN: Okay.

12 MR. MacDONALD: I can e-mail you a
13 copy of the resolution. I didn't have
14 a chance to do it before.

15 MS. CASHMAN: Okay.

16 MR. MacDONALD: I apologize I was
17 short on time. I will e-mail it to you
18 in the morning, and then you can send
19 it in with this and that would be it.

20 MS. BROOKS: Thank you very much.

21 CHAIRMAN GIAMETTA: Anything
22 further, do we need a discussion, board
23 members?

24 (No audible response)

25 CHAIRMAN GIAMETTA: Having heard

1 ROYAL ENERGY

2 none, motion to adjourn the meeting.

3 MR. SALINOVICH: I will make a
4 motion to adjourn.

5 CHAIRMAN GIAMETTA: A second.

6 MR. MEKEEL: I will second.

7 CHAIRMAN GIAMETTA: All in favor?

8 MR. MEKEEL: Aye.

9 MR. ZAMBITO: Aye.

10 MR. SALINOVICH: Aye.

11 CHAIRMAN GIAMETTA: And aye.

12 Meeting adjourned. Thank you for all
13 in attendance.

14 (Whereupon, at 7:36 P.M., the
15 Hearing was concluded.)

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